IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.836 of 1998

Shri Vishnu Ramaji Shinde
Age about 61 years,
Occupation Agriculturist
residing at Bori Khurd
Taluka Junnar, Dist,.Pune ..Petitioner

vs.

1. State of Maharashtra

2. Special Land Acquisition Officer
No.22, Pune, Collector Office
Compound, Pune 1

3. District Resettlement Officer
Pune, Collector Office
Pune

4. Shri Shankar Ramaji Shinde
Age 57 years,
Occ: Agriculturist
residing at Bori Khurd, Tal.
Junnar, Dist. Pune

5. Sou.Mangal Gajanan Shinde
Age about 34 years
Occ: Agriculturist'
Residing at Bori Khurd Tal.
Junnar, Dist. Pune
(Respondent nos.4 and 5
deleted vide Court's order
dated 31.8.1998) ..Respondents

Shri R.K.Saroj with Shri S.V.Pitre for petitioner
Shri C.R.Sonawane, A.G.p. for respondent nos. 1 to 3

CORAM: A.P.SHAH &
S.U.KAMDAR JJ.
13th Setember, 2004

ORAL JUDGMENT:(Per A.P.Shah J.)

1. Heard Advocates.

2. The sole contention of the petitioner is that

the petitioner and respondent no.4 had sold part of their land on 4th September, 1988 and if this land is deleted the holding of the petitioner and respondent no.4 would be 2 H 88 R and as the holding is less than 8 Acres no land is liable for acquisition.

3. In the counter affidavit filed on behalf of the respondents it is stated as under:

> With reference to para IX of the Writ Petition, I want to submit that the notice under sec.4(1) was given to the petitioner Shri Vishnu Ramji Shinde, respondent no.4 Shri Shankar Ramji Shinde and respondent no.5 Smt.Mangal Gajanan Shinde. This notice was received by Shri Gajanan Vishnu Shinde on their behalf. The enquiry under sec.5-A was conducted accordingly. The copy of receipt of notice under sec.4(1)l is attached herewith at Exh.5. The opportunity of hearing was given to the petitioner at the time of enquiry under sec.5A held on 6.2.90 and petitioner gave the objection to the effect that he held 4.36 Hector land on his Khata and he has sold out 1/2 portion from Gat no.416 to Smt.Mangal Gajanan Shinde due to some family problems, on 4.11.1988.

If that land is deleted he held 2.88 Hector land on his khata. As l that holding is less than 8.00 Acres the land is not eligible for acquisition. Therefore, the petitioner had requested to delete his land from acquisition. The Special Land Acquisition Officer has given his remark on the objection that as per the map of Benefited Zone, the total Gat No.416 comes in Benefited Zone. The petitioner/complainant has sold the land after the application of restriction of transafer u/s 11(1) of the Maharashtra Resettlement of Project Displaced Persons Act, 1976. Therefore, the objection is not proper and the land should be notified in the declaration u/s 6 of the Land Acquisition Act. The Collector has given the remark in which he has stated in brief that half of portion of Gat No.416 is out of Benefited Zone. Some portion of Gat No.416 has been sold to Smt.Mangal Gajanan Shinde. Therefore, the land to which slab can be applied is 3.25 Hector i.e. 8 Acre 1 Guntha. Therefore, 0.81 Hector land proposed for acquisition should be deleted. The copy of "D" Patrak containing the above mentioned remarks, prepared at the time of

5-A enquiry is attached herewith at Exh.6. But the objection was rejected and the land was included in the declaration u/s 6 of the Land Acquisition Act by the Commissioner, Pune Division, Pune. The copy of Gazette of declaration under sec.6 is attached at Exh.7. I further want to state that the petitioner has filed the review application bearing No.6/1999, in the court of Additional Commissioner, Pune Division, Pune for deletion of his land which is still pending before the Court.

4. Thus, it is clearly seen that the holding of the petitioner is only 8 A and 1 G and, therefore, action of the respondents in acquiring the land admeasuring 81 R from the petitioner is totally illegal and without jurisdiction.

5. Thus, Rule is made absolute in terms of prayer clauses (b) and (c). No order as to costs.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE FCJURISDICTION

Writ Petition No. 836 of 1998

Date of Judgment: 13th September, 2004

For approval and signature of:

The Hon'ble Mr.A.P.SHAH J.

The Hon'ble Mr.S.U.KAMDAR J.

1. Whether the Reporters of the local papers may be allowed to see the judgment/order?

2. Whether to be referred to the Reporters or not?

3. Whether Their Lordships wish to see the fair copy of the judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad and Goa offices?